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No. 137

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

MASSACHUSETTS TRUSTEES OF EASTERN GAS AND FUEL ASSOCIATES, *Petitioners*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITIONERS' APPENDICES A AND B

December 12, 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPENDIX A

Opinion of Judge Weigel in American President Lines, Ltd. v. United States

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In Admiralty No. 28426

AMERICAN PRESIDENT LINES, LTD., a corporation, *Libelant*,

v.

UNITED STATES OF AMERICA, *Respondent*.

In Admiralty No. 28705

UNITED STATES OF AMERICA, *Libelant*,

v.

AMERICAN PRESIDENT LINES, LTD., et al., *Respondents*.

MEMORANDUM FOR JUDGMENT

[October 10, 1963]

These cases involve a bareboat charter under which American President Lines, Ltd. (hereafter "APL") commercially operated numerous Government owned cargo vessels during the years 1946-1955. APL alleges that the charter provided for illegally excessive rates of hire based on erroneous interpretations of pertinent statutes by the United States Maritime Commission and its successor agency, the Maritime Administration (hereafter sometimes collectively referred to as "Maritime"). APL accordingly seeks a declaratory judgment of its nonliability to the Gov-

ernment's demand for some two million dollars. The Government, denying illegality, libels APL and its surety for the hire allegedly due.

APL moves for summary judgment, the parties having filed numerous affidavits and exhibits. There being no genuine issue of material fact, the cases are ripe for decision. The libels are within this Court's jurisdiction. *Sword Line, Inc.* v. *United States*, 351 U.S. 976 (1956); *Luckenbach Steamship Co.* v. *United States*, 312 F. 2d 545 (2d Cir., 1963).

The legal issues stem from the provisions of the charter referred to at the outset. It is one of the standard "Form No. 303-SHIPSALESDEMISE" charters used in leasing out Government vessels to private operators under the Merchant Ship Sales Act, 1946, 50 U.S.C. App. 1735-1747. Some history of this standard charter and of the litigation about it are set forth in *American Foreign Steamship Corp.* v. *United States*, 291 F. 2d 598 (2d Cir., 1961), certiorari denied 368 U.S. 895 (1961), and in *Massachusetts Trustees of Eastern Gas and Fuel Associates* v. *United States*, 312 F. 2d 214 (1st Cir., 1963).

For the purposes of this memorandum, other relevant matters will be set out or indicated in connection with the issues to which they relate. There are five issues to be considered. The first is major and central.

1. *The "sliding scale" or "progressive profit-sharing" issue.*

The Merchant Ship Sales Act, *supra*, empowered Maritime to reject or approve applications for charter of the type of vessels here involved. (Sec. 5(a), 50 U.S.C. App. 1738(a)). Ensuing statutory provisions regarding charter hire underlie the principal controversy between the parties here and the conflict of authority among the courts which have passed upon the same question in other cases. Those provisions are these:

MERCHANT SHIP SALES ACT OF 1946
[50 U.S.C. App. 1738]

Charter of War-Built Vessels to Citizens

SEC. 5. • • •

(b) The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

(c) The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

MERCHANT MARINE ACT, 1936
[46 U.S.C. 1199]

SEC. 709. (a) Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

The charter before the court provides, as to rates, for (1) a monthly firm or fixed "basic charter hire" of at least 15 per centum per annum of the vessels' statutory sales prices, plus (2) a contingent annual "additional charter hire" of from 50 to 90 percent of the charterer's cumulative net voyage profit in excess of ten per centum per annum of the capital necessarily employed in the charter operations.

This court holds that the challenged sliding scale is contrary to the governing statutory provisions. In so holding, I have considered the conflicting decisions on the question, all of which will be later cited, as well as the able advocacy, written and oral, of counsel expert on the issues. I would not add to the welter of words on the subject were it not for my conviction that the question is not close and that exposition of the reasons underlying this conclusion may be useful in the ultimate resolution of the conflict in authority.

At the threshold, I am unable to find any critical or, indeed, significant inconsistency between Section 5(b) and Section 709(a). The meaning of the words in these sections is clear. They make sense as part of a statutory purpose and plan within the province of the Congress. The judicial function, broad though it be, does not properly include substitution of the views of a court for those of Congress on economic and business questions. Judicial restraint in areas such as these is the measure of judicial wisdom, if, indeed, in an ultimate sense, not of judicial authority.

Section 5(b) begins by authorizing the Commission to fix charter hire "at such rate as the Commission determines to be consistent with the policies of this Act . . .". This grant of authority is then limited in three respects.

The first limitation is that the rate of charter hire shall not be less than 15 per centum per annum of the statutory sales price, computed as of the date of charter, except upon

the affirmative vote of no less than four members of the Commission. This limitation, contained in the first sentence of 5(b), is not involved in this case because the charter here requires a hire of at least the 15 percent requisite to avoid application of the limitation.

The second limitation is to the effect that the rates of charter hire fixed by the Commission shall, if they "differ from the rate specified," not be less than the prevailing world market charter rates. This limitation, set out in the second sentence of 5(b), is not here involved because the rate provided in the charter does not so differ.

The third limitation stems from the statutory declaration of Section 5(c) requiring that the provisions of Section 709(a) "*shall* be applicable to charters made under" Section 5(b) (emphasis added). The charter here is undeniably one made under Section 5(b). No one has suggested that there is any other authority for it, and there is none. It is plain, therefore, that the provisions of 709(a) apply. Congress could hardly have used language more clearly so requiring.

It is perhaps worthy of note here that, while the first two limitations upon the authority granted the Commission are stated as exceptions, the limitation imposed by Section 5(c) is stated positively and affirmatively through employment of the command "shall". It would hardly seem appropriate to treat a positive command as having less force in specifying a qualification upon a grant of power than a statement or statements qualifying that grant in the form of exceptions.

What, then, is the limitation upon the authority of the Commission thus made applicable by explicit command? It is a declaration in 709(a) which spells out in detail those provisions which must be included in "*Every charter made by the Commission* pursuant to the provisions of this title . . ." (emphasis added). When examination is made of

the provisions which Congress had thus declared requisite to every charter made by the Commission, we find an unambiguous, carefully worded and easily understood statement that every charter shall provide that "the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum . . .". Congress was careful and exact in its designations in 709(a) as to what it meant by the terms used in the quoted phrase.

Summarizing, the mandate of Congress relevant to the charter now before the court is this:

> The provisions of Section 709(a) *shall* be applicable and, accordingly, the charter *shall* provide that the charterer shall pay over to the Commission, *as additional charter hire*, one-half of cumulative net voyage profit in excess of the 10 per centum per annum.

The words "as additional charter hire" obviously mean charter hire in addition to that provided for by the Commission in exercise of its authority under Section 5(b). To hold otherwise is judicial amendment striking those words out of the statute. To hold that the words "shall pay over to the Commission . . . one-half of . . . cumulative net voyage profit" means that the cumulative net voyage profit to be paid *shall not be less than* one-half thereof is judicial enactment into the statute of a concept and words which are not there. It cannot reasonably be contended that Congress did not know how to specify a minimum when it so intended. It did that very thing in this very statute by the requirements, in Section 5(b), that the charter rate "shall not be less than" 15 percent of statutory sales price except upon the affirmative vote of "not less than four members of the Commission" as well as by the requirement therein that the charter rate under certain circumstances "shall not be less than" the referenced prevailing world market rates.

Why should plain language be disregarded? Why should Congressional draftsmanship be demeaned or attacked? Why should escape be sought from the plain meaning of plain words predicated upon inconclusive assumptions as to the history or purpose of the legislation? In putting these questions, it is not suggested that APL, as the charter has worked out, has not profited. However, this result has stemmed, it seems to me, from the economic vagaries and imponderables in chartering. The annual operations under this charter under the same management fluctuated, during a period of some nine years, from a loss in one year of $387,916.47 to a profit of $5,451,001.88 in another. There is no evidence to indicate that Congress was any less aware of the feast and famine characteristics of the shipping business than the Commission.

Congress, by the provisions of Section 5(b), Section 5(c) and Section 709(a) here operative said to Maritime, in effect: "You may charter at 15 percent or more per annum of statutory sales price, but you must also include a provision for payment, as additional charter hire, of one-half of cumulative net voyage profit as such provision is spelled out in Section 709(a) of this statute."

If, as it has been urged and is true, a purpose of the statute was to encourage sale as against charter, the Commission was given ample scope so to encourage by its broad power to fix the annual charter hire at any rate it wished over 15 per centum of statutory sales price. A high, non-contingent rate of charter hire would surely be more effective in inducing sale than a contingent rate, however high, preconditioned upon the making of a profit in excess of 10 percent of invested capital.

Moreover, the requirement of equally dividing cumulative net voyage profit between the Commission and the charterer may well be advantageous to the government of the United States and serviceable to proper Congressional

purposes. There are interlocking relationships between revenue from charter hire on the one hand and, on the other, costs of shipping, including costs of shipping which must be borne by governmental agencies. While one purpose of the statute was to encourage sale over charter, there were other objectives calling for a balancing, such as, for example, encouragement of a thriving American Merchant Marine for the purposes of defense, full employment and the like. The provisions of 709(a) requiring, in effect, that charterers should receive 50 percent of certain profits make good sense in that interest. Furthermore, while the connection may not be direct and applicable in all cases, profit enjoyed by a domestic shipping company surely has some relation to its need for government largesse in terms of subsidies.

It may be that a Congressional enactment permitting the Commission to do what it has done in this charter would more effectively have promoted the policies of the Act. But that supposition, even if amounting to conviction, does not justify disregarding the mandate of Congress.

We have here, then, a statutory scheme which is clear. There is a grant of power to the Commission. It is not an unqualified grant. It is qualified by two exceptions (neither applicable here) and by an express requirement (very much applicable here). Nothing in the facts preclude application of the statute as written and enacted by the Congress of the United States. Congress may have been wiser in what it provided, although that is subject to reasonable debate. In any case, we are not concerned with the wisdom of what Congress did. There is no contention here, nor could there be any reasonable one, that Congress acted beyond its authority.

In short, in the absence of reasons far more compelling than any here present, it seems unwise, indeed, to hold that Congress meant something different than it plainly said.

The holding here, it should be underscored, is not that the Commission proceeded under the wrong section or sections of the statute or that it could have exacted the charter hire it undertook to require here by the use of different language in its forms. The holding here is that Maritime was bound by a clear requirement imposed by Congress in its proper exercise of legislative power. And, of course, the holding here is not that the Commission acted in any way in bad faith nor with any intent other than to acquit its responsibilities in the highest public interest.

As noted earlier, other courts have reached a different conclusion or have reasoned differently in arriving at the same result. I am most grateful to the learned authors of the opinions in those decisions because study and re-study of their views generated whatever merit there may be in those outlined above. The cases are: *American Export Lines, Inc.* v. *United States*, 290 F.2d 925 (Ct. Cl., 1961); *American Mail Line, Ltd.* v. *United States*, 213 F.Supp. 152 (W.D. Wash., 1962); *Dichman, Wright & Pugh, Inc.* v. *United States*, 144 F. Supp. 922 (S.D.N.Y., 1956); *Massachusetts Trustees of Eastern Gas and Fuel Associates* v. *United States, supra*, affirming the decision reported in 202 F.Supp. 297 (D. Mass., 1962); and *United States* v. *Eastport Steamship Corporation*, 216 F.Supp. 649 (S.D. N.Y., 1963). See, also: *United States* v. *East Harbor Trading Corp.*, 190 F.Supp. 245 (S.D.N.Y., 1960) and *Sword Line* v. *United States*, 228 F.2d 344 (2d Cir., 1955), aff'd on rehearing 230 F.2d 75, aff'd as to jurisdiction 351 U.S. 976 (1956).

2. *The estoppel and "January 30, 1959, letter agreement" issue.*

APL is not estopped from limiting its liability for cumulative net voyage profits to the one-half specified by 709(a). In the first place, I construe the final proviso of Clause 13 of the charter here to constitute a reservation of rights by

the charterer which effectively forecloses any claim of estoppel. The text of the clause as well as a thoroughgoing review of its history and significance are set out in Judge Friendly's dissent in *American-Foreign, supra*, 291 F.2d 598 commencing at page 613. Judge Friendly's interpretation there appears to me to be unassailable as does that of Judge Beeks in construing the same clause in *American Mail Line, supra.*

While it seems clear to me, without more, that there is no estoppel against APL, the latter's letter of January 30, 1959 to the Commission (made an agreement by the Commission's written acceptance) has cumulative relevance here as well as to APL's request for a protective order regarding certain charter hire payments keyed to the time of the making of subsidy payments to APL.

In January 1959, there was approximately $8,000,000 of accrued subsidy due from Maritime to APL, and about $7,700,000 of charter hire due Maritime, on various charters, a portion of which was in dispute. In order to provide for an orderly liquidation of these accounts, and because of the existing dispute, the parties executed a letter-agreement on January 30, 1959, which provided that when a subsidy payment was made to APL, the latter would make a payment to Maritime of equal amount to be applied first in liquidation of undisputed charter hire, and then to hire which was in dispute. To avoid the arguments advanced in *American-Foreign Steamship Corp., supra*, that such disputed payments would be voluntary and unrecoverable, the agreement said in part:

> 4. . . . It is agreed that such payments shall be without prejudice to or effect upon the rights and claims of either party, and that such payments shall not be considered to be a voluntary payment in acceptance of the position of the United States with respect to any such unresolved or disputed item.

Since payments of disputed hire may shortly be made on the charter here in litigation, APL asks that the agreement be declared valid. The Government contends that it is without consideration and therefore ineffective.

The agreement was admittedly executed by an authorized official of the Administration, and APL undertook thereby to make payments of hire which it might otherwise withhold because of the existence of a bona fide dispute. It was therefore supported by consideration and valid. See: 17 C.J.S., *Contracts* § 110; *Richfield Oil Corp.* v. *United States*, 248 F.2d 217, 223 (9th Cir., 1957); *Pittsburgh Testing Lab.* v. *Farnsworth & Chambers Co.*, 251 F.2d 77, 79 (10th Cir., 1958); *Board of Education* v. *American Nat. Bank*, 294 Fed. 14, 19 (8th Cir., 1923); *United States* v. *Westmoreland Manganese Corp.*, 134 F.Supp. 898, 910 (E.D. Ark., 1955), aff'd, 246 F.2d 351 (8th Cir., 1957); *Maco Warehouse Company California* v. *United States*, 169 F.Supp. 494, 500 (Ct. Cl., 1959); *In re New York, O. & W. R. Co.*, 178 F.2d 765, 766 (2d Cir., 1950).

3. *The "split accounting" or "Foreign Trade Addendum" issue.*

APL states that Section 709(a) calls for additional charter hire to be computed on an *annual* basis. It alleges that Maritime violated that command by requiring an agreement calling for additional charter hire from voyages after September 1, 1947, to be computed separately from that of voyages prior to that date.

The facts compel rejection of APL's argument. The real issue here is not as to the period or periods for computation of additional charter hire. It is as to the term of charters.

Maritime notified all charterers on August 15, 1947, that it was exercising the right (reserved in the charters to both parties) to terminate chartering on 15-days' notice. Some charterers requested Maritime to devise new terms and conditions for acceptance in lieu of termination. On

August 20, 1947, Maritime announced such new terms (including a requirement for separate accounting after September 1, 1947), but stated that the original termination notice would stand, absent acceptance of the new agreement.

APL voluntarily sought and obtained such a new agreement ("Foreign Trade Addendum"). The new agreement expressly stated it was "a *separate* charter between the parties." There is no evidence that APL's acceptance of the new agreement was unlawfully forced. Nor were Section 709(a)'s calendar year accounting requirements violated; they do not provide that two *separate* charters within one year must be combined for accounting purposes. See *Massachusetts, supra*, at 223.

4. *"Cumulative accounting" issue.*

This issue calls for determination of the proper accounting period or periods for cumulation of profits and losses in establishing liability for additional charter hire which may be payable under Section 709(a). Resolution requires construction of the following language of that Section (the entire Section is set out, *supra*, at page 3):

> Every charter * * * shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits * * * shall exceed 10 per centum per annum on the charterer's capital necessarily employed * * *, the charterer shall pay over to [Maritime], as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum; *Provided*, That the cumulative net voyage profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

The positions of the parties, as set out in greater detail below, are these: Maritime has long interpreted this Section as calling for payment whenever, at the end of any calendar year of the charter, excess profits have cumulated from the starting date of the charter or, as the case may be,

from the start of the calendar year following the last payment of additional charter hire. APL contends that any payments made on this basis are tentative, and that final liability for additional charter hire is to be determined at the end of the charter after cumulation of profits and losses over the life of the entire charter period.

This court has concluded that Maritime's interpretation, now to be more fully spelled out, is correct. Taking the commencement of the term of the charter as the starting date of the period of computation, no additional charter hire is payable until the end of an ensuing calendar year (whether the first following the starting date or a later one) when, cumulating profits and losses for the entire intervening period, the accounting shows that the requisite excess profits have accrued. A profit payment is then to be made to Maritime and such payment is considered final. If, during the term of the charter, a profit has thus become payable, a new and separate period of cumulation commences with the beginning of the calendar year following the period for which payment has been made and extends to the end of a following calendar year when cumulation for the entire intervening period (again whether for a year or more) shows a profit to be payable. Thus as to any given charter, *depending on the operating figures*, there are three possibilities: (1) Additional charter hire may be payable following the end of each calendar year of the term of the charter or (2) no additional charter hire may ever accrue or (3) there may be one or more periods during the term of the charter when additional charter hire becomes payable.

The accounting periods for cumulation and computation of additional charter hire are determined by the operating figures. The end of each calendar year marks the date for casting up the figures to determine whether or not additional charter hire has become payable; but no pay-

ment becomes due unless the cumulation of figures for a year or longer shows the requisite excess of profits over losses.* When, however, such a payment is determined to be due, the effect of the proviso of the Section is to close that period of cumulation; a new period is then started for purposes of computation; and so on to the end of the charter period.

APL urges that Section 709(a) is to be read as requiring cumulation of profits and losses over the *entire* period of the charter. In the recent case of *United States* v. *Moore McCormack Lines, Inc.*, 308 F.2d 866 (4th Cir., 1962; cert. den. 372 U.S. 944, 1963) reversing the District Court holding reported in 199 F.Supp. 522 (D. Md., 1961), the Court of Appeals gave such a meaning to the Section. It held that the profit payments made under the Maritime formula were to be considered merely tentative and were subject to readjustment at the end of the charter after a final audit of the operating figures for the entire term of the charter. The court there reasoned, and APL here contends, that the purpose of the proviso was not to prevent profits from being carried forward against subsequent losses, but was only to protect the charterer against paying more than once on the same profits. It seems to this court, however, that the proviso proscribes the carry-forward for any purpose of profits once accounted for, i.e., whether to add to subsequent profits or to offset subsequent losses. Nowhere in the Section is there language which suggests that payments of additional charter hire are not final. Had Congress wished to indicate otherwise, it easily could have done so.

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* Of course, it is possible, consistently with the foregoing, that the first or last payment of additional charter hire may be due for a period of less than a full year. For example, if the commencement date of the charter were June 1 and the operating figures for the ensuing six months to the end of that calendar year should show a profit payable on the basis set out in 709(a), the amount of that profit would be payable as to that six months.

5. *The "quantum valebant" issue.*

The Government argues that if the charter is held illegal the parties would be relegated to a *quantum valebat* or *quantum valebant* situation and that under the doctrine of unjust enrichment APL would then be obligated to pay the fair market value of the vessels' use. See *Massachusetts, supra*, 202 F.Supp. at 308; *Clark* v. *United States*, 95 U.S. 539 (1877). But the holding here is not that the charter is illegal. The holding here is that only that portion of it which exceeded Maritime's authority is not to be enforced and that the parties, in effect, agreed that this would not invalidate the rest of the charter. To invoke *quantum valebat* here would be needlessly to cast adrift upon uncharted seas this charter, the parties to it and, prospectively, governmental agencies bound by Congressional limitation of rate-making power.

Counsel have indicated that the amounts to be awarded by judgment can be stipulated. They are granted thirty days in which to so do and in which to submit a proposed judgment accordingly implementing this opinion. Such judgment shall also effectively provide that payments of disputed charter hire made by American President Lines, Ltd., pursuant to the January 30, 1959 letter-agreement are without prejudice to the rights of either party and are not to be considered voluntary payments so as to bar recovery thereof.

Dated: October 10, 1963.

STANLEY A. WEIGEL
Judge

APPENDIX B

LEGISLATIVE HISTORY APPENDIX

Part I—Legislative Background Showing Mandatory Character of Section 709(a) as Embodied in the Merchant Marine Act, 1936

The legislative history of the 1936 Act shows that Congress meant to fix the profit sharing percentage at 50 percent for all charters under that act. It did not mean to authorize the Maritime Commission to vary the figure upward (or downward). The purpose of Congress in providing for profit sharing was to allow charterers a "fair profit, but not an excessive profit." The proposed legislation that became the act first used that very language as a rate making standard. In the legislative evolution, the specific 50 percent rate replaced this dual but general standard. At the same time a provision requiring variation in the profit sharing percentage (actually a sliding scale in another form) was rejected. By specifying a rate, in lieu of a general rate making standard and of a sliding scale, Congress manifested its intent to withhold from the agency the discretion (now claimed by the Government) to set the profit sharing rate administratively.

The chartering provisions were incorporated into the 1936 Act on the Senate floor as a compromise between supporters of the Copeland bill (S. 3500, 74th Cong., 2d Sess. Calendar No. 1799, Feb. 24 (calendar day Mar. 26) 1936) and supporters of the Guffey bill (S. 4110, 74th Cong., 2d Sess. Feb. 24 (calendar day Feb. 27) 1936). The Copeland bill, reported to the Senate by a majority of the Committee on Commerce (S. Rep. No. 1721, 74th Cong., 2d Sess. (1936)), contained no chartering power. The Guffey bill, supported by a strong minority, contained extensive chartering authority in "Title VII—Operating

Charters." Most of those provisions were identical with the chartering provisions that became title VII of the act.[1]

The principal area of difference between the chartering provisions in the original Guffey bill and those in the compromise revision of that bill which was enacted lay in the method of fixing rates of charter hire. Both the Guffey bill and the final act contained competitive bidding requirements.[2] The Guffey bill, however, provided (with elaborate qualifications) that the charter be awarded "to the bidder proposing to pay the highest percentage of voyage profits as charter hire" (§ 46(a)). It further provided for an ascending scale of "additional charter hire" in the event of an increase in revenue accruing to the charterer from freight rate increases (§§ 47(a) and (b)).[3] Finally, the bill (§ 44) laid down guidelines for the Commission to follow in determining what was a reasonable charter hire. One of these was that the Commission was to "encourage the realization *of a fair profit, but not an excessive profit*, by the private operator" (§ 44(e)). This provision was to apply during periods of prosperity; in times of shipping depression, the Commission was au-

[1] Sections 39-43, 45(a), 46(b) and (c), 47(c) and 48-51 of the Guffey bill were practically identical with sections 701-705, 706(a), 707(b) and (c), 709(b) and 710-13 of the act.

[2] Section 45(a) of S. 4110; sections 706 and 707 of the act (49 Stat. 2009, as amended, 46 U.S.C. §§ 1196-97).

[3] Section 47(b) of the Guffey bill (S. 4110) provided:

> Such additional charter-hire provision shall be identical in every charter and *shall provide for a progressively higher percentage share in voyage profits to be paid to the Commission* for every increase of 10 per centum in the freight or passenger rates in the trade territory served by the line when such increase results in increased revenue to the charterer, but the formula shall be so devised that due credit shall be given to the charterer for any increase in voyage expense occasioned by the economic conditions which have brought about the increase in freight and/or passenger rates.

thorized to charter vessels without payment of any charter hire.[4]

The Senate committee rejected the Guffey bill partly on the basis of objections to the provisions authorizing charters without payment of hire in times of depression and for charter hire based partly on profits in good times. These were thought not to provide sufficiently for recoupment of the Government's investment in ships (S. Rept. No. 1721, 74th Cong., 2d Sess. p. 12 (1936)). To meet the stated objections, the compromise bill replaced the provision for award to the bidder offering the highest rate of profit sharing with the present section 707(a), which dictated the award "to the bidder proposing to pay the highest monthly charter hire," and with sections 706(b) and 714, which fixed a minimum dollar rate (based on percentage of selling price and calculated to cover the Government's investment) below which the Commission could not go. The ascending scale of profit sharing in section 47(b) was replaced by the present section 709(a) fixing a flat 50 percent rate. And that provision served the further purpose of giving specificity to the more general exhortation of the Guffey bill that in times of prosperity the Commission should "encourage the realization of a fair profit, but not an excessive profit."

Thus the flat 50 percent replaced a rejected ascending scale; it also replaced a general statement of Congress's

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[4] Indeed, in bad times the Commission was authorized to accept bids requiring it to pay some of the charterer's expenses. Thus, section 44(a) provided:

> During period of economic depression which makes it difficult to operate profitably any line, the Commission is authorized to require only a nominal charter hire, and on any lines that cannot be operated except at a loss the Commission is authorized to require no charter hire and further assist the operator by paying a certain proportion or all of the wages of the crew. . . .

ultimate rate objective—a profit sharing rate "fair" . . . but not . . . excessive." To the extent that the opponents of the Guffey bill feared excessive profits, the 50 percent was a floor under contractual profit sharing. But to the extent that its supporters sought to assure the charterers "fair" profits, the 50 perecnt was a ceiling. Both purposes of Congress cannot be attained unless it is treated as both floor and ceiling. Moreover, to permit the Commission to vary the rate would nullify two deliberate actions of Congress, one removing the subject of profit sharing from the area of general exhortation to that of specific definition, and the other, removing it from the variable to the fixed.

The court below criticized this argument from the legislative history on the ground that the Senate rejected the Guffey bill as a "giveaway."[5] But it is not clear what follows from this. The "giveaway" objection did not run to every chartering provision in the Guffey bill—clearly it had no application, for example, to the proposed ascending scale of profit sharing.[6] In any event the final version was a compromise between the supporters and the opponents of the Guffey bill, and in the evolution of that

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[5] The court below did not find any indication in the legislative history that section 709(a) fixed only a floor, not a ceiling; it merely rejected the contrary argument, and on somewhat obscure grounds. In fact, the fundamental reason for rejection of the Guffey bill by the majority of the Senate Committee was their objection to its provisions for Government construction, ownership and operation of vessels. The term "giveaway," which the court of appeals coined, and upon which it relied in rejecting petitioner's argument, more accurately describes the views of the ten member minority of the Senate Committee in criticizing the Copeland bill (S. Rept. No. 1721, 74th Cong., 2d Sess., pp. 25-26 (1936)).

[6] True, the committee majority regarded the Guffey bill as inadequate protection for the Government; but its objections went chiefly to the provisions for charters free of hire in bad times; not to the provision for profit sharing in good times. Under the Guffey bill, as under the act, the Government was to share profits in good times—indeed, to share them on an ascending scale.

compromise certain facts are fundamental. First, the act substituted a dollar minimum rate for bidding based on percentage of profits; second, the act, substituted the 50 percent rate of additional charter hire for an ascending scale of additional charter hire; and third, it substituted the 50 percent rate for the general concept of a "fair profit, but not an excessive profit." The conclusion is inescapable that the 50 percent rate was meant to be the one and only profit sharing rate.

Further evidence of the intent of Congress in enacting section 709(a) will be found in considering the so-called subsidy recapture provisions of section 606(5) of the 1936 Act.[7] These provisions are so similar in language to sec-

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[7] SEC. 606. Every contract for an operating differential subsidy . . . shall provide

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(5) that when at the end of any ten-year period during which an operating-differential subsidy has been paid under a contract or consecutive contracts (such period to be computed from the end of the operator's last completed recapture period regardless of its duration, or from the beginning of subsidized operations if the operator has not previously completed a recapture period), or when prior to the end of such ten-year period subsidized operations shall be finally terminated, if the net profit of the contractor on his subsidized vessel and services incident thereto during such period or time (without regard to capital gains and capital losses), after deduction of depreciation charges based upon a life expectancy of the subsidized vessels determined as provided in section 607(b), has averaged more than 10 per centum per annum upon the contractor's capital investment necessarily employed in the operation of the subsidized vessels, services, routes, and lines, the contractor shall pay to the United States *an amount equal to one-half of such profits in excess of 10 per centum per annum* as partial or complete reimbursement for operating-differential subsidy payments received by the contractor for such recapture period, but the amount of excessive profit so recaptured shall not in any case exceed the amount of the operating-differential subsidy payments theretofore made to the contractor for such period under such contract or consecutive contracts and the prepayment of such reimbursement to the Commission shall be subject to the provisions of section 607; . . .

tion 709(a) that the same legislative intent can fairly be attributed to both. Since there can be no doubt that recapture under section 606(5) is restricted to 50 percent, no more and no less, the same percentage used in section 709(a) is likewise both a maximum and a minimum.

That the 50 percent recapture clause in section 606(5) is both a floor and a ceiling is evident from statements made by the managers of the bill in both the House and Senate debates. Senator Guffey stated (80 Cong. Rec. 6779 (1936)):

> All profits earned by a steamship company in excess of 10% per annum would be shared with the Government on a 50-50 basis.

Congressman Sirovich stated (80 Cong. Rec. 10575 (1936)):

> Fourth, the bill further provides for the recapture of profits in excess of 10%. One-half would go to the Government and one-half to the reserve fund so as to enable shipping operators to rebuild their ships when they became old and obsolete.

Furthermore, as first proposed, S. 3500, the Copeland bill, containing the provisions that eventually became section 606(5), established the recapture rate at 75 percent of profits in excess of a 6 percent return to the steamship company (§ 530(c), S. 3500, 74th Cong., 2d Sess. (introduced Jan. 6, 1936)). The modification of these rates to 50 and 10 percent, respectively, evidences an intent to restrict the Government's share. Also, the committee report stated (S. Rept. No. 1721, 74th Cong., 2d Sess. p. 20 (1936)):

> Provision is made for the recapture by the Government to the extent of the operating subsidy of 50 percent of the profits above 10 percent, after the creation of the required reserves.
>
> Your committee thought it wise to insert this provision although the possibility of recapture to some

> extent destroys the 'parity' or equality of opportunity with the foreign competitor, no doubt contemplated by the President in his message of March 1935. No foreign subsidizing nation, other than France, applies this theory, but France shares losses as well, a proposition vastly more desirable to the ship owner than our proposal, which contains no guarantee whatever against losses.

These comments show that the committee had doubts as to the wisdom of requiring any recapture of profits whatever, since this would conflict with a basic policy of the act—parity of the ship operators with their foreign competitors.[8] The committee made an accommodation between the parity policy, on the one hand, and the secondary policy of limiting profits, on the other, by settling upon an even split of all profits above 10 percent. On a construction which treats 50 percent as a floor but not a ceiling, effect is not given to both branches of this accommodation, and the primary objective of the subsidy program is the branch that falls.[9]

Additional policy considerations made Congress further aware of the necessity that 50 percent be construed as a ceiling on recapture. Upon the recommendation of the Maritime Commission, section 606(5) was amended in 1938 to increase to ten years the period during which

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[8] The basic theory of titles V and VI of the 1936 Act (46 U.S.C. §§ 1151-1182) was and is to pay subsidy to the shipbuilders and operators in an amount equal to the difference between domestic and foreign costs of construction and operation.

[9] The views of the ten members of the committee minority are consistent with the equal-sharing intent evidenced by the majority. They recognized that the operator "... must share one-half of any remaining profits [above 10 per cent] with the Government" (S. Rept. No. 1721, 74th Cong., 2d Sess., p. 26 (1936)). The minority criticized recapture not because of the fifty-fifty formula, but because of the provisions of title VI for reserve funds to be set up by the operator out of profits before recapture.

profits and losses would be accumulated and offset against each other for purposes of calculating recapture. The purpose of the amendment was stated by the House Committee as follows (H. Rept. No. 1950, 75th Cong., 3d Sess. p. 23 (1938)):

> This amendment is one which the Commission reported as being most necessary in order to attract private capital to the maritime industry. . . . Experience has shown that 5-year periods do not cover the average business cycle in the steamship business. The result will be that profits earned in the prosperous period of the business cycle would be recaptured with no reserves left for the depression period. On the other hand, a 10-year period will come very close to covering the whole cycle. It is proposed to change the 5-year period to one of 10 years. This change will distinctly tend to attract investment in the industry and is most essential to obtain the development of the merchant marine sought for by the act.

All these considerations together demonstrate Congressional awareness of the necessity, and its intention, that vessel operators be assured a reasonable share of their profits during good times. To construe the recapture provision as fixing a floor but not a ceiling would conflict with this desire and with the fundamental objective of the 1936 Act, the development of a vigorous, privately operated American merchant marine. What was sought to be accomplished by the recapture provisions was, in their own field, also sought to be accomplished by the chartering provisions, which therefore, require a like construction.

The Maritime Commission anticipated the error that it fell into later with respect to chartering. Its 1937 report to Congress[10] pointed out:

> The moment a subsidized ship line creates substantial cash reserves and perhaps, begins to pay dividends,

[10] United States Maritime Commission, *Economic Survey of the American Merchant Marine*, 36 (1937).

there arises a demand for a reduction in the amount of aid. The general public does not know that the cyclical nature of the shipping industry requires large cash reserves; nor do people stop to realize that the continuation of private investment requires the payment of profits. The investor cannot be blamed for hesitating to put his money into an industry which, if profitable, is constantly subject to public and congressional condemnation on the ground of excessive subsidy.

Its later attempt to construe away the ceiling aspect of section 709(a) shows how valid that prophecy was.

PART II—LEGISLATIVE COMMENT ON DESIRABILITY OF CHARTERING UNDER THE MERCHANT SHIP SALES ACT OF 1946.

In the House debates it was stated:

> MR. HALE. The bill also provided in section 5 for the charter of war-built ships to citizens at a statutory charter hire. There is no provision for chartering to foreigners. Obviously we desire to sell ships rather than to charter them, but the committee did not feel that we should refuse to charter. In a time of such great economic unrest we recognize that many domestic shipping interests will prefer to charter and await developments rather than to buy. (91 Cong. Rec. 9196 (1945))

Further reference is made to the subject in H. Rep. No. 831, 79th Cong., 1st Sess. pp. 8-9 (1945), where it was stated:

> While it is the policy of the bill to place as many of the war-built vessels as possible in the hands of private operators, it is recognized that there will be many cases where, because of uncertainty of success in reestablishing a trade, or because of opening up a new trade, sales will not be possible, whereas charters will. If the operator meets with success under a charter, he will in all likelihood desire to purchase the chartered vessel or another war-built vessel. Until

that time, he will have had an opportunity, without a large capital outlay on his part, of establishing or reestablishing a trade, and the United States in return will have received a charter hire sufficient in amount to cover depreciation on the vessel during the charter period, the interest it would have received if the vessel had been sold, and 6½ percent per annum in addition as compensation for the use of the vessel.

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Certain provisions applicable to charters under the Merchant Marine Act, 1936, are also made applicable to charters under the bill. The vessel is made eligible for an operating differential subsidy (sec. 708 of the 1936 act); one-half of the profits in excess of 10 percent of the capital necessarily employed in connection with the chartered vessel must be paid to the Commission as additional charter hire (sec. 709 of the 1936 act); . . .

During consideration of the draft of the legislation which contained a 12½ percent basic rate, Maritime commented to the House Committee with respect to the rate of charter hire and its effect on encouraging sales over charters, as follows:

The rates of hire set forth in the bill have been subjected to some criticism on the theory that they are too high while other criticism is directed against chartering at all. The theory of the bill is that, while charter terms should not be such as to encourage the charter of vessels rather than their sale, nevertheless there may be a substantial number of operators who may ultimately become purchasers but who hesitate to do so because of uncertain trade conditions, particularly in the development of new routes. There will also exist situations where the right types of vessel for the long-range development of the trade are not immediately available and the chartering of existing vessels may constitute a worth-while temporary solution pending more suitable replacement vessels. This is particularly true in the passenger trades and it may well be that even the minimum rates set forth in the bill may be too high to permit successful opera-

tion. The bill accordingly permits giving effect to such special circumstances by the Commission upon concurrence of four members. (Hearings before the House Committee on Merchant Marine and Fisheries on H. R. 1425, 79th Cong., 1st Sess. p. 493 (1945))

S. Rep. No. 807, 79th Cong., 1st Sess. pp. 13-14 (1945), commented upon the charter hire provision, as follows:

> The Commission will fix the charter hire consistently with the policies of the act, but the rate of hire, unless the Commission by vote of four members otherwise authorizes, may not be less than 15 percent per annum of the statutory sales price. . . .
>
> The rate of 15 percent, it is contemplated, will provide a charter hire sufficient in amount to cover depreciation during the charter period, interest at the rate the United States would receive from unpaid installments if it had been sold, and 6½ percent in addition as compensation for the use of the vessel. This rate of 15 percent conforms with the wartime practice of fixing bareboat use under War Shipping Administration operation at 15 percent of value for vessels built since 1937—a standard generally regarded as reasonable for the past. Under the 1936 act subsidy provisions 5 per centum is the depreciation rate, and 10 percent profit is allowed before recapture operates. It is recognized that the value of the use may decline in the future because of the existence of tonnage in excess of world shipping requirements. The Commission is given discretion by a vote of four to prescribe a lower rate, subject to the limitation as to world charter rates. This limitation will have to be realistically applied taking into account various factors such as the trade routes involved, rates charged by or in other countries, and the temporary or short-time charter of world rates at a given time. . . .
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> Certain provisions of the Merchant Marine Act, 1936, relating to charters, are made applicable to charters under section 5. The vessel is made eligible for an operating differential subsidy (sec. 708 of the

1936 act); one-half of the profits in excess of 10 percent of the capital necessarily employed in connection with the chartered vessel must be paid to the Commission as additional charter hire (sec. 709); . . .

In postenactment hearings before the House Committee on Merchant Marine and Fisheries on H.R. Res. No. 36, 80th Cong., 2d Sess. p. 4 (Feb. 12, 1948), the Chairman of Maritime testified:

> Experience under the charter program indicates that it affords opportunity for United States operators to expand their ship operations and to enter into the field of tramp operation, acquiring the operating knowledge in that field and the desirable knowledge of sources of tramp cargo which may help to build a permanent business, and justify acquisition of tonnage for use in permanent business.

PART III—MANDATORY CHARACTER OF SUBSIDY, SALES AND CHARTER PROVISIONS IN THE 1936 AND 1946 ACTS.

In the 1936 Act, are the following mandatory sections: Section 505(b) ("No contract shall be made for the construction of any vessel under this Act unless the shipbuilder shall agree . . ."); section 506 ("Every owner of a vessel for which a construction-differential subsidy has been paid shall agree . . ."); section 603(b) ("Such contract shall provide that . . ."); section 606 ("Every contract for an operating differential subsidy under this title shall provide . . ."); section 607(a) ("Every contract for an operating-differential subsidy made under authority of this title shall provide . . ."); section 709(b) ("Every charter shall contain a definition of the terms . . ."); section 712 ("Every charter shall provide . . ."); section 801 ("Every contract executed by the Commission under the provision of titles VI or VII of this Act shall contain provisions requiring . . ."); section 802 ("Every contract executed by the Commission under authority of title V of this Act shall provide . . .").

In the 1946 Act there are many specific mandatory sections, such as section 8(d) (50 U.S.C. App. 1736(d)), laying down a mathematical formula for the determination of sales prices for vessels and the adjustment of these prices for "desirable features" and depreciation; section 4(a) (50 U.S.C. App. 1737(a)), which provides that Maritime "*shall sell*" vessels to qualified citizen applicants, "*at the statutory sales price*"; section 4(b) (50 U.S.C. App. 1737(b)), laying down the specific terms of mortgage sales; section 4(c) (50 U.S.C. App. 1737(c)), specifying that neither contracts of sale nor mortgages "shall . . . restrict the lawful or proper use or operation of the vessel"; section 5(b) (50 U.S.C. App. 1738(b)), setting the basic charter hire rate at "not less than 15 per centum," or if less than this rate, "not less than the prevailing world market charter rate"; section 5(c) (50 U.S.C. App. 1738(c)), stating that the provisions of section 709 "*shall* be applicable to charters . . ."; and section 9 (50 U.S.C. App. 1742), fixing a strict mathematical formula for the adjustment in the price of vessels purchased by citizens prior to enactment of the Act. In dealing with sales of vessels to noncitizens, section 6(a) of the 1946 Act (50 U.S.C. App. 1739(a)) authorizes Maritime to charge a price of "*not less than* the statutory sales price." That same section also provides that no sales shall be made to noncitizens until vessels had been made available for a reasonable time for sale or charter to citizens of the United States.

The Merchant Ship Sales Act was under active consideration in Congress from 1944 until its enactment in 1946. The documentation is voluminous. The excerpts given below demonstrate that the Congress deliberately set out to prescribe precise, detailed and mandatory standards for the calculation of the sales prices and charter hire rates for the Government's surplus ships. Every effort was made to minimize the area of administrative discretion.

In anticipation of post-war problems of merchant marine policy, the Navy Department and the Maritime Commission contracted with the Graduate School of Business Administration of Harvard University for a study and recommendations. The report thus prepared was before the Congress throughout its deliberations, was printed as a Committee document in the House,[1] was drawn upon in the preparation of committee reports, was referred to frequently in floor debate, and can well be considered the starting point for the development of Congressional policy on the post-war disposition of the Government's warbuilt fleet.

The Harvard Report made a detailed analysis of our experience after World War I in meeting problems expected to be encountered again, and made the following comments on our historical experience:

> A third factor was the lack of a clearly defined and approved public policy. . . . These conflicting opinions led to congressional debate, widespread editorial comment, confusion and timidity in private enterprise, and criticism of any significant sales actions taken by the Board. . . .
>
> . . . No specific instructions were included in the act concerning the terms of vessel disposal, however, and no measures were proposed to aid potential purchasers.
>
> Thus a fourth factor, closely associated with the third, hindering the sale of vessels, was the lack of definite legislative provisions to guide the Shipping Board in the sale of vessels. (At page 230.)[2]

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[1] *The Use and Disposition of Ships and Shipyards at the End of World War II*, H.R. Doc. No. 48, 79th Cong., 1st Sess. (1945).

[2] Senator Bailey, Chairman of the Committee on Commerce, quoted at length from the Harvard Report in his opening statement at the final Senate hearing on the statute. The language given above was selected for emphasis by Senator Bailey, and is italicized in the printed transcript. Hearings before a Subcommittee of the Committee on Commerce on S. 292, 79th Cong., 1st Sess., at 55-86 (1945).

Both Houses of the Congress paid heed to this warning of our past mistakes and deliberately wrote into the World War II Ship Sales Act mandatory provisions prescribing in detail the terms and conditions of sale and charter of war-built vessels.

The Senate Committee report on the bill said:

> Your committee is of the opinion that the history of the merchant marine and the testimony at the hearings fully support conclusions summarized in the Report on the Use and Disposition of Ships and Shipyards at the End of World War II (Graduate School of Business Administration, Harvard University), which analyzes the postwar ship sales history of World War I. That report emphasizes the lack of a clearly defined and approved public policy with respect to the disposition of the war-built fleet. It emphasizes the lack of definite legislative provisions to guide the Shipping Board in the sale of vessels. (See Doc. No. 48, House Merchant Marine and Fisheries Committee, p. 230.) . . .
>
> . . . *Only Congress can lay down the necessary standards and directions for the orderly disposition of the war-built fleet*, in order that there may be established and maintained a healthy and vigorous postwar American merchant marine in the interest of world-wide peaceful commerce, in the interest of national security, and *in order that those having the direct responsibility of administration may be guided and controlled by standards acceptable to the Congress* speaking in the public interest. (Emphasis supplied.) (S. Rep. No. 907, 79th Cong., 1st Sess. 2 (1945)).[3]

The Maritime Commission was not only to be *guided* by Congressional standards; it was to be *controlled* by them.

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[3] A similar statement was made by the House committee in its report, H. Rep. No. 831, 79th Cong., 1st Sess. 2-3 (1945).

The Conference Report on the bill is filled with numerous determinations compromising disagreements in precise arithmetical terms or in precise definitions classifying vessels and prospective purchasers or charterers and spelling out allowances and adjustments. H. Rep. No. 1526, 79th Cong., 2d Sess. (1946).

In a statement opening the final Senate hearing on the bill, Senator Bailey, Chairman of the Committee on Commerce, quoted extensively from the Harvard Report, and said:

> The problem of orderly disposition of that fleet is of such national and international import that the Congress must speak affirmatively and positively in laying down standards and directions for its disposal, in order that there may be established and maintained a healthy and vigorous postwar American merchant marine, in the interests of world-wide peaceful commerce, in the interests of national security, taking advantages of lessons learned in World War I and the period intervening before World War II, and in order that those having direct responsibility may be guided by standards acceptable to the Congress. (Hearings before a Subcommittee of the Committee on Commerce on S. 292, 79th Cong., 1st Sess., at 84 (Sept. 14, 1945)).

During Senate debate, Senator White, a member of the Committee, vigorously attacked the bill on the ground that it left no discretion in the Maritime Commission as to the terms upon which vessels could be sold or chartered. The following colloquy took place on the Senate floor:

> Mr. White . . . Then, in my view, this bill undertakes so to circumscribe the authority, so to limit the activities, and so to subordinate the judgment of the Maritime Commission with respect to what ships should be sold and the prices at which they should be sold that the purpose of the bill is defeated.
>
> Mr. President, at other times we have faced situations in which it was necessary to move in sale or

charter ships of the United States not needed for the commerce of the United States. In the 1916 Shipping Act there was a provision for the disposition of our ships; but that act contained no such limitations upon the authority and discretion of the Shipping Board as are to be found written into this bill with respect to the authority and discretion of the Maritime Commission. In 1920 we again wrote legislation with respect to our shipping, and under that legislation we gave to the Shipping Board authority to sell or charter ships. But we wrote into that law no provisions similar to the ones which are to be found in the pending bill. In 1936 we repealed the 1928 Shipping Act and we wrote other legislation, and in it we gave authority to the Maritime Commission to sell vessels not needed for the commerce of the United States. But in that act we do not find any such limitations upon the discretion, authority, and action of the Maritime Commission similar to the provisions written into the pending bill.

This bill runs counter to the history of the United States in the last 30 years in the maritime field. The only reason I can see for the bill, Mr. President, is a desire of the Maritime Commission to escape the responsibility and the exercise of the authority which heretofore we have vested in that body . . .

But in the pending bill, by removing from the Maritime Commission the obligation to exercise discretion and responsibility, we are undertaking to substitute for its discretion and responsibility a statement of the terms and conditions under which such sales may be made and we are undertaking to establish the rigidity of law in place of the exercise of sound discretion by a regulatory body. I say such a procedure will hinder the sale of vessels . . .

The only way to move the ships is to trade with the rest of the world and to vest in someone in this Government—and I have no hesitancy in saying that it should be the Maritime Commission—authority and discretion in the matter, and to compel it to take the responsibility and to meet the conditions as it views them.

MR. RADCLIFFE, MR. MAGNUSON, and MR. HART addressed the Chair.

The PRESIDING OFFICER (MR. TUNNELL in the chair). Does the Senator from Maine yield; and if so, to whom?

MR. WHITE: I yield first to the Senator in charge of the bill.

MR. RADCLIFFE. Mr. President, the fact is that the House of Representatives and the members of the Senate Commerce Committee, after a long and careful study, have reached a conclusion entirely different from the views of the Senator from Maine. (91 Cong. Rec. 11863 (1945)).

During House debate, emphasis was placed on the differences between the views of Executive Branch proponents of the legislation and the views of the members of the Committee on Merchant Marine and Fisheries. The proponents of the bill made it clear in repeated statements that the Committee drafted detailed mandatory provisions for the very purpose of making sure that the Congressional policy would be set forth in unmistakable terms. Each of the representatives quoted below was a member of the Committee. Thus:

MR. BLAND. May it not be said that this is a committee bill prepared by the committee from all of the information it could get?

MR. BRADLEY of Michigan. I agree with the gentleman and it has been brought forth by the committee despite bureaucratic efforts to emasculate it. (91 Cong. Rec. 9166 (1945)).

The Statute was given unusually careful and extensive consideration in the Congress.[4] The Congressional managers of, and spokesmen for, the legislation made it abundantly clear that they deliberately set out to write a detailed mandatory set of instructions for the Maritime Commission, to avoid the mistakes made after World War I. They rejected efforts to widen administrative discretion. They produced, and the Congress enacted, a statute unusually detailed and precise. The Ship Sales Act, so drafted, entrusted the Maritime Commission with the administration, not the formulation, of a ship-disposal and chartering policy.

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[4] Judge Bland, Chairman of the House Committee on Merchant Marine and Fisheries, when first reporting the bill, described its drafting history in language which, coming from a veteran of his standing in the House, is a striking testimonial to the extraordinary attention the committee gave this statute:

> The bill is one of the most difficult bills that I have had anything to do with in my 27 years of service in this House. It far exceeds the 1936 act, which was considered by the Committee on Merchant Marine and Fisheries while I was serving as chairman. There are more complications; less unanimity among interests that ought to be united in presenting a bill. More questions have arisen than in any other bill we have considered. Its preparation has taken much more time than I could have desired and could have believed was possible, because we have gone over the bill many times, considered many prints, and tried to reconcile as nearly as we could, the various opposing interests. (91 Cong. Rec. 9162 (1945)).